

STATE OF MONTANA COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL GOVERNMENT ENTITIES	REF: CNTY-10
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PROGRAM/SUBJECT: Counties - Property Taxes	

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

(**Note:** Compliance requirements relating to property tax levy limits for individual funds and for the county in total are contained in the compliance supplement on budgets (CNTY-2 - Counties - Budgets))

ELEMENTS OF TAX NOTICE & PUBLICATION:

1. Compliance Requirements:

- The tax notices mailed to each taxpayer should include the following:
 - a. the amount of taxes and assessments owed for the current year,
 - b. the amount of taxes and assessments due and delinquent for other years,
 - c. the taxable value of the property,
 - d. the total mill levy applied to that taxable property,
 - e. itemized city services and special improvement district assessments collected by the county,
 - f. the number of the school district in which the property is located, and
 - g. the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

ELEMENTS OF TAX NOTICE & PUBLICATION - continued:

1. Compliance Requirements - continued:

- h. If the property is the subject of a tax sale for which a tax sale certificate has been issued under MCA 15-17-212, the notice must also include, in a manner calculated to draw attention, a statement that the property is the subject of a tax sale and that the taxpayer may contact the county treasurer for complete information.
(MCA 15-16-101)
- The tax notices mailed to each taxpayer should also include notification of the \$5 minimum tax requirement, if applicable. (MCA 15-16-118)
- Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying the tax payment due dates and the penalties to be assessed on delinquent taxes. (MCA 15-16-101)

Suggested Audit Procedures:

- Review selected tax notices, including ones that were subject to a tax sale, to determine if they include all of the required information as specified above.
- Verify that the county treasurer published a notice specifying the tax payment due dates and the penalties to be assessed on delinquent taxes within 10 days of receipt of the property tax record.

TAX PAYMENT DUE DATES:

2. Compliance Requirements:

- All taxes levied and assessed are payable as follows: (MCA 15-16-101 and 102)
 - a. One-half payable on or before November 30 or within 30 days after the tax notice is postmarked, whichever is later; and
 - b. One-half payable on or before May 31.

(Note: If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with MCA 1-1-307 (MCA 15-16-102))
- Taxes on mobile homes, manufactured homes and housetrailer not taxed as an improvement (taxed as personal property) are due as follows:
 - a. the first payment is due on or before May 31 or within 30 days from the date of the tax notice, whichever is later, and
 - b. the second payment is due no later than November 30 of the year in which the property is assessed. (MCA 15-24-202)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX PAYMENT DUE DATES - continued:

2. Compliance Requirements - continued:

- The following exceptions also apply to the above "Tax Payment Due Dates:
 - (a) All taxes, whether on real or personal property, due on property owned by a resident of Montana in the military service, as defined by section 511 of the Service members Civil Relief Act, 50 App. U.S.C. 511, as amended, while serving outside of Montana must be suspended.
 - (b) Proceedings may not be taken for the collection of the taxes and penalties or interest may not accrue until 1 year after the cessation of hostilities or 1 year after the taxpayer is released from active duty.
 - (c) If the taxpayer was wounded, injured, or suffered a disease while serving in a combat zone or participating in a contingency operation as described in 10 U.S.C. 101(a)(13) that is serious enough to require hospitalization, proceedings may not be taken and penalties or interest may not accrue until 1 year after the taxpayer's release from the hospitalization.

(MCA 10-1-606)

(Note: To obtain the benefits the qualified taxpayer or a co-owner of the property or agent of the taxpayer shall file with the treasurer of the county an affidavit stating that the person against whom the taxes are imposed is in military service. The affidavit must be filed on or before the time that taxes would become delinquent. (MCA 10-1-606))

- Special assessments that a city or town certifies to the county require payment as follows, except as explained in the note below: (MCA 7-12-4181, 7-12-4188 and 15-16-103)
 - a. One-half the payment on or before November 30;
 - b. One-half the payment on or before May 31.

(Note: All bond issues dated prior to March 20, 1979, and many issues dated from March 20, 1979, through April 30, 1985, were set up with a single annual payment of principal and interest. The time of the payment was established based on a single November assessment payment. Therefore, for certain S.I.D. debt service funds, the assessments may still be collected entirely in November because of the required time for the principal and interest payment. There should be very few of these left outstanding.)

- Property tax payments deposited in the United States mail on or before payment deadlines, as shown by the postmark on the envelope received by the Treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the County Treasurer. (AGO # 12, Vol. 40)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAX PAYMENT DUE DATES - continued:

Suggested Audit Procedures:

- Review selected tax notices and determine if the taxes were due on the dates specified above.
- Review selected billing notices to determine if the special assessments certified by cities or towns to the county for collection were due on the dates specified above.

MINIMUM TAX ASSESSMENT:

3. Compliance Requirement:

- If the taxes and special assessments due for the current year are less than \$5, the county must notify the taxpayer that a minimum tax of \$5 is due. The difference between the taxes and special assessments and the minimum tax of \$5 will go to the county general fund. (MCA 15-16-118)

Suggested Audit Procedure:

- As part of testing of property tax revenue, determine that no tax notices with an amount due of less than \$5 are sent to taxpayers. If a tax notice is for \$5, determine if the difference between the actual taxes and special assessments due and the minimum payment of \$5 is deposited to the county general fund.

PENALTY FOR DELINQUENCIES:

4. Compliance Requirements:

- Interest on delinquent real and personal property taxes must be charged at a rate of 5/6 of 1% a month. A 2% penalty will also be added to the delinquent taxes. (MCA 15-16-102)
- Interest on delinquent taxes on mobile homes, manufactured homes, or house trailers that are not taxed as an improvement must be charged at a rate of 5/6 of 1% per month. A 2% penalty will also be added to the delinquent taxes. If a mobile home is moved and the taxes have not been paid in full, there will be an additional penalty of 20% or \$50, whichever is greater. (MCA 15-24-202 and 15-16-102)

(Note: See Compliance Requirement No. 2, above. For property owners in military service who are serving outside of Montana or who are hospitalized as specified in MCA 10-1-606, penalties or interest on delinquent taxes may not accrue until 1 year after the cessation of hostilities or 1 year after the taxpayer is released from active duty, or 1 year after the taxpayer's release from the hospitalization.)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

PENALTY FOR DELINQUENCIES - continued:

4. Compliance Requirements - continued:

- Interest on delinquent special assessments that a city or town certifies to the county must be charged at a rate of 5/6 of 1% a month. A 2% penalty will also be added to the delinquent taxes. (MCA 7-12-4188 and 15-16-102)
- The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer. (MCA 15-16-102(6) and 15-16-103)
- One-half of the taxes are due on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half is payable on or before May 31. If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with MCA 1-1-307 (MCA 15-16-102)
- If taxes on property qualifying under the low-income property tax assistance provisions of MCA 15-6-134(1)(c) and 15-6-191 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due. (MCA 15-16-102)

Suggested Audit Procedures:

- As part of testing of property tax revenue, test selected interest and penalties on delinquent taxes to determine if the rates are charged as stated above.
- Determine if the city council waived any penalty and interest payments on delinquent assessment. If so, verify that a resolution was prepared and certified to the county treasurer.
- Determine if there was any property qualifying under the low-income property tax assistance provisions. If so, verify that any penalty and interest on late payments were in accordance with the provisions specified above.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

RECEIPT OF PAYMENT IN ASSESSMENT BOOK:

5. Compliance Requirement:

- The county treasurer must note the date and the amount of the payment of any tax in the property tax record (assessment book) and issue a receipt to the person paying the tax. If, however, the payment is received through the mail or by electronic means, the treasurer shall issue a receipt only on request of the person paying the tax. (MCA15-16-104)

Suggested Audit Procedure:

- Review the county treasurer's property tax records to determine if the dates and amounts of property tax payments are recorded.

PAYMENT OF DELINQUENT TAXES:

6. Compliance Requirements:

- A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided that taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year. (MCA 15-16-102(5)(a))
- A payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of the above compliance requirement is not a partial payment. (MCA 15-16-102(5)(b))

Suggested Audit Procedures:

- As part of testing of property tax revenue, test selected delinquent tax payments to determine if the payments were made as described above.
- Determine if there were any co-owners of an undivided ownership interest that is subject to a separate assessment. If so, verify that those payments were not recorded as a partial payment.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CORRECTION OF DEFECTS IN PROPERTY TAX RECORD:

7. Compliance Requirements:

- When the county treasurer discovers that any property has been assessed more than once for the same year, the county treasurer shall collect only the tax due and report that fact to the Department of Revenue. (MCA 15-16-105)
- Any time after the original assessment or prior to a sale for delinquent taxes, omissions, errors or defects in the property record may only be corrected by the Department of Revenue. If the correction involves an assessment of property that is the subject of pending litigation with a taxing jurisdiction within the county, the county attorney must be notified of the correction. (MCA 15-8-707)

(Note: If the Department of Revenue revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared. (MCA 15-16-102))

Suggested Audit Procedures:

- If the county treasurer discovers that any property has been assessed more than once for the same year, determine that the county treasurer collects only the tax due and reports that fact to the Department of Revenue.
- Test selected adjustments that were made to the original assessments and determine that they originated with the Department of Revenue.

Suggested Audit Procedures - continued:

- If litigation was involved, determine that notification was given to the county attorney.

DELINQUENT PROPERTY TAXES LISTING REMITTED TO BOARD:

8. Compliance Requirement:

- The county treasurer must prepare and submit to the county commissioners on or before the first Monday of June a list of personal property taxes that are not a lien on real estate that have been delinquent for 5 years or more. The list must show the name and address of the delinquent taxpayer; the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and the date the taxes became delinquent. The list may not include personal property taxes that remain uncollected due to bankruptcy or other litigation. (MCA 15-16-701(1))

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

DELINQUENT PROPERTY TAXES LISTING REMITTED TO BOARD - continued:

8. Compliance Requirement - continued:

- **Effective 4/28/2007** – The county treasurer may prepare and submit to the county commissioners a list of the real property taxes that have been delinquent for 10 years or more. To be included on the list, the tax lien for each property must have been sold at a tax lien sale under Title 15, Chapter 17, MCA, which includes the county as purchaser of the tax lien under MCA 15-17-214, at least 3 years before preparation of the list. If prepared, the list must show the name and address of the delinquent taxpayer; the amount of the delinquent taxes, plus interest, penalties, and costs, if any; the real property identification number; the legal description of the property; the date the taxes became delinquent; and the date of the last tax lien sale on the property. The list may not include real property taxes that remain uncollected because of bankruptcy or litigation. (MCA 15-16-701(2))
- **Effective 4/28/2007** – The board of county commissioners may enter an order that permanently and prospectively cancels real property taxes on parcels identified by the county treasurer or the board as being solely used for road purposes and that otherwise meet the requirements of MCA 15-16-701. (MCA 15-16-701(3))
- Within 30 days of receiving the lists provided for above, the board of county commissioners shall examine and make any necessary corrections. After examining the list, the board shall make its order canceling all real property taxes and personal property taxes in the list or lists. (MCA 15-16-702)

Suggested Audit Procedure:

- Determine that the county treasurer is presenting to the county commissioners the required report of personal property taxes that have been delinquent for 5 years or more and a list of the real property taxes that have been delinquent for 10 years or more which shows the county as the purchaser of the tax lien. Review a copy of the report.

MUNICIPALITY CERTIFIED SPECIAL ASSESSMENTS:

9. Compliance Requirement:

- Special assessments that are certified to the county as delinquent by cities and towns must be added to the taxes/assessments receivable and recorded in the appropriate agency account by both the county clerk and recorder and the county treasurer. (MCA 7-6-4423 and 7-12-4183)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

MUNICIPALITY CERTIFIED SPECIAL ASSESSMENTS - continued:

Suggested Audit Procedure:

- Review a copy of any delinquent assessment certificates submitted to the county by cities and towns and determine that the delinquent assessments were added to the taxes/assessments receivable in the appropriate agency fund(s) of the county.

REMITTANCE OF MONEY TO STATE AND MUNICIPALITIES:

10. Compliance Requirements:

- The county treasurer must, between the 1st and 20th day of each month, remit to the Department of Revenue all money belonging to the state that was collected by the county treasurer during the preceding month. (MCA 15-1-504) (**Note:** Beginning July 1, 2006, motor vehicle collections are remitted separately to the Department of Justice – see below.)
- By June 20 of each year, the county treasurer must remit to the Department of Revenue an estimate of all money belonging to the state that was collected by June 15, in addition to the amount collected during the preceding month. By July 15, the county treasurer must remit all money belonging to the state that was collected during the remainder of June. (MCA 15-1-504)
(**Note:** The Department of Revenue may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required. (MCA 15-1-504))
- Beginning July 1, 2006, the county treasurer shall remit to the Department of Justice by the 20th of each month all state money that was collected by the county treasurer due to motor vehicle, vessel, and snowmobile transactions during the preceding month. The remittance must be accompanied by a detailed report upon a form prescribed by the Department of Justice. (MCA 15-1-504(3))

Suggested Audit Procedures:

- Test selected remittances by the county treasurer to the state to determine that they were made by the 20th of the month following collection and that they included all money belonging to the state that was collected by the county treasurer during the preceding month.
- In addition, determine that the June 20 remittance included an estimate of all money belonging to the state that was collected by June 15, in addition to all money belonging to the state that was collected by the county treasurer during the preceding month. Determine that collections made in the remainder of June were remitted by July 15.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

REMITTANCE OF MONEY TO STATE AND MUNICIPALITIES - continued:

Suggested Audit Procedures - continued:

- Beginning July 1, 2006, determine that all state money for motor vehicle, vessel, and snowmobile transactions was remitted to the Department of Justice by 20th of the month following the collection.

11. Compliance Requirements:

- The county treasurer must, within a reasonable time after collection, compute the amount of taxes due to cities and towns in the county and pay it to the proper custodian of funds for the entity. The lapse of one month after collection of the bulk of the taxes is not a reasonable time. (MCA 7-6-4413) (Cut Bank v. McNamer, 62 Mont. 490, 205 P. 951 (1922))
- When remitting taxes to a city, the county treasurer must break out the amount received from taxpayers as payment for the city's special improvement district assessments. (AGO #48, Vol. 43)
- Unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax. Therefore, local government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the County Treasurer. (AGO #25, Vol. 41))

Suggested Audit Procedures:

- Test the dates of selected remittances from the county treasurer to city and town treasurers to determine that they were made on a timely basis.
- Test selected remittances from the county treasurer to city and town treasurers and determine that the remittances break out the amount received from taxpayers as payment for the various special improvement districts.
- If applicable, determine that the remittances include interest and penalties collected on delinquent property taxes.

PROTESTED TAXES:

12. Compliance Requirement:

- The person upon whom a property tax or fee is being imposed under Title 15, Chapter 1, Part 4, MCA, may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

PROTESTED TAXES - continued:

12. Compliance Requirement - continued:

payment must: (a) be made to the officer designated and authorized to collect it; (b) specify the grounds of protest; and (c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under MCA 15-7-111. (MCA 15-1-402(1))

Suggested Audit Procedures:

- Test selected receipts of taxes and fees paid under protest to determine if they were accompanied by written notice as specified above.
- Verify that the protested tax or fee payment was equal to the elements described

13. Compliance Requirements:

- All property taxes and fees paid under protest must be deposited to a special protested tax fund (agency fund) and must be retained in the protested tax fund until final determination of any action or suit to recover the taxes, unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to the provisions of MCA 15-1-402(5). (MCA 15-1-402(4)) A subsidiary record should be kept for each taxpayer.
- **The following applies retroactively to any tax appeal or tax paid under protest after October 31, 2000,**– Property taxes that are levied by the State of Montana against property that is centrally assessed pursuant to MCA 15-23-101, (pertaining to property that is operating in more than one county in the state or more than one state) must be remitted by the county treasurer to the Department of Revenue. (MCA 15-1-402(4)(b))

Suggested Audit Procedures:

- **For an audit of FY 2003 –**
 - a. Determine if the County made a review of its protested tax fund. If so, verify that any protested tax funds pertaining to centrally assessed property levied by the State have been remitted to the State as noted above. Also, ensure that subsidiary records are kept for each taxpayer noting the amount remitted to the State.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

PROTESTED TAXES - continued:

Suggested Audit Procedures - continued:

- b. Test selected receipts of taxes and fees paid under protest during the year to determine that they are remitted to the State, if applicable, or recorded in a special protested tax fund and retained in that fund until final action or until released as provided by statute, and that subsidiary records are kept for each taxpayer.
- Test selected receipts of taxes and fees paid under protest during the year.
- If applicable, verify that any protests of centrally-assessed property taxes were remitted to the State Department of Revenue. (**Note:** The only protests of centrally-assessed property taxes that should be maintained by the County are those taxes protested on or before October 31, 2000, that are not yet resolved.)
- Verify that protests of all other property taxes are recorded in a special protested tax fund. Verify that the money is retained in that fund until final action or until released as provided by statute. Also, ensure that subsidiary records are kept for each taxpayer.

14. Compliance Requirements:

- The governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except for the first-year protest amount. (MCA 15-1-402(5)(a))
- **The following applies retroactively to any tax appeal or tax paid under protest after October 31, 2000,** – The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled. (MCA 15-1-402(5)(b))

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

PROTESTED TAXES - continued:

Suggested Audit Procedures:

- Determine whether any taxing jurisdiction affected by the payment of taxes under protest that remains unresolved have demanded that the county treasurer pay all or a portion of the protest taxes to which it is entitled.
- If so, determine that the compliance requirements noted above relating to the years of protest subject to such a demand have been adhered to.

15. Compliance Requirements:

- If a protested tax action is determined in favor of the protestor, the treasurer must refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. The interest paid shall be at the rate of interest earned by the pooled investment fund provided for in MCA 17-6-203, for the applicable period. (MCA 15-1-402(6)(b))

(Note: The county treasurer is not responsible for the amount required to be refunded by the state treasurer. The Department of Revenue shall refund the amount of protested taxes and interest to the tax protester as required by MCA 15-1-402(6)(b). (MCA 15-1-402(6)(d)))

- If the Department of Revenue revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed. (MCA 15-1-402(8))

Suggested Audit Procedures:

- Compare the amount of selected protested tax payments from the protested tax fund to the certified copy of the final judgment from the state tax appeal board or court. Calculate the interest that was paid on the amount refunded to determine if the rate paid was paid as provided for above.
- If the refund was caused by a revised assessment then determine that no refund of taxes was given if it was for \$5 or less.

16. Compliance Requirement:

- If an action regarding protested taxes that is brought before the county or state tax appeal board or the district court does not begin within the time specified (90 days of the date of the tax notice per MCA 15-1-406(2)) or if the action is determined in favor of the government, the amount of the protested portions of the property tax or fee

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

PROTESTED TAXES - continued:

16. Compliance Requirement - continued:

must be taken from the protest fund and deposited to the credit of the fund or funds to which the tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units. (MCA 15-1-402(6)(a))

Suggested Audit Procedures:

- Test protested taxes remaining in the protest fund and determine that 90 days since the date of the notice has not elapsed without the protestor taking action, or if action has been taken, that there has been no final action ordered by the state tax appeal board or a court.
- Test the distribution of protested taxes to determine if they were distributed to the fund or funds to which the tax belongs, less any pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

LIVESTOCK RESERVE FUND TAXES:

17. Compliance Requirement:

- The county may deposit up to 5% of the property tax collected each year on livestock in a livestock reserve fund to be used for making refunds for overpayments of property tax on livestock. When the amount in the reserve fund exceeds 10% of the total property tax collected in a year on livestock, the excess must be transferred to the county general fund and included in the next year's county budget. (MCA 15-24-926)

(Note: The 1999 Legislative Session repealed this section effective January 1, 2003. Therefore, it appears that any money remaining in this fund after January 1, 2003, must be transferred to the county general fund and included in the next year's county budget.)

Suggested Audit Procedure:

- Determine that all remaining funds in the livestock reserve fund have been transferred to the county general fund.